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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,460	01/05/2001	Michael Glenn King	0041-P00941US3	6786

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DANN DORFMAN HERRELL & SKILLMAN  
SUITE 720  
1601 MARKET STREET  
PHILADELPHIA, PA 19103-2307

EXAMINER

WANG, SHENGJUN

ART UNIT	PAPER NUMBER
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.1617

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/755,460	<b>Applicant(s)</b> KING, MICHAEL GLENN	
	<b>Examiner</b> Shengjun Wang	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 December 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

1. The terminal disclaimer filed on December 11, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 5,883,137 has been reviewed and is accepted. The terminal disclaimer has been recorded.
2. Applicants' response filed December 11, 2002 are persuasive to overcome the double patenting rejection set forth in the prior office action. Following is a new ground rejection.
3. Claims 2 and 3 are withdrawn from further consideration as drawn to non-elected invention.

### *Claim Rejections 35 U.S.C. 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for cytochrome p450 inducers disclosed at pages 6-7 in the specification, does not reasonably provide enablement for any other agents which may be cytochrome p450 inducers. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Applicant uses functional limitation 'cytochrome p450 inducers' to defined the agents employed in the method. A person of ordinary skill in the art would have been required to perform undue experimentation to use claimed invention, particularly, to identify those 'cytochrome p450 inducers' within claimed scope. Applicants disclose certain examples of cytochrome p450 induces, but do not disclose any guidance, direction, or working examples as to

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how to identify cytochrome inducers. Therefore, applicants do not provide a proper written description of the claimed subject matter. Functional limitation is proper only if there is a disclosed or known knowledge that couple the function characteristics with the actual structure. The specification provides no such knowledge, and gives no indication that such knowledge is known in the art.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The claim recites plant extract containing flavonoid, *and* cytochrome P450 inducers. However, the specification discloses that flavonoid is cytochrome P450 inducers. See page 6, lines 19-20 in the specification. It is not clear whether the claimed composition require cytochrome P450 inducer in addition to the plant extract or not. The claim is indefinite as to the scope of cytochrome P450 inducer encompassed thereby.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Patent Examiner

SHENG JIN WANG  
PATENT EXAMINER

Sheng Jin Wang

April 5, 2003